U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] AND RELATE) Office: HARLINGEN, TX Date: AUG 13 2009

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Harlingen, Texas, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who, on September 25, 1985, pled guilty to and was convicted of illegally entering the United States in violation of 8 U.S.C. § 1325. The applicant was sentenced to six months in jail. On September 26, 1985, the applicant was placed into immigration proceedings for having entered the United States the day before without inspection. On March 14, 1986, the immigration judge ordered the applicant removed from the United States. On March 18, 1986, the applicant was removed from the United States and returned to Mexico. The record reflects that the applicant reentered the United States two weeks later without inspection.

On April 30, 1997, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on an approved Petition for Alien Relative (Form I-130) filed on his behalf by [redacted]. On October 7, 1998, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued. On October 8, 1998, the applicant was removed from the United States and returned to Mexico. The record reflects that the applicant reentered the United States two weeks later without inspection.[1] On November 17, 1998, the Form I-485 was denied.

On June 7, 2003, the applicant filed a second Form I-485 based on the Legal Immigration Family Equity Act (LIFE Act). On the same day, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On January 12, 2004, a Notice of Intent to Deny (NOID) was issued. The NOID indicated that the applicant was inadmissible pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), as an alien who has assisted, aided, or abetted another in entering the United States illegally. The applicant failed to respond to the NOID and the Form I-485 was denied on March 19, 2004. On March 19, 2004, the Form I-601 was also denied.[2]

On January 28, 2005, the applicant filed the Form I-212, indicating that he continued to reside in the United States. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) for a period of twenty years. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with his lawful permanent resident daughter and two U.S. citizen children.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The field office director determined that the applicant was not eligible to apply for permission to reapply for admission because he had not remained outside the United States

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[1] The AAO notes that the applicant's illegally reentry into the United States in October 1998, after he had been removed, renders him inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and he is ineligible for permission to reapply for admission until he has remained outside the United States for a period of ten years. *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006) and *Gonzales v. DHS* (*Gonzales II*), 508 F.3d 1227 (9th Cir. 2007).

[2] Counsel claims that the applicant is not barred from relief pursuant to section 212(a)(9)(A) and 212(a)(9)(C) of the Act because of the provisions in 8 C.F.R. § 245a.18(c)(1). The AAO notes, however, that the applicant's LIFE application was denied on March 19, 2004 and, therefore, the applicability of 8 C.F.R. § 245a.18(c)(1) is not relevant because there is no pending LIFE application for the Service to consider.

for the required ten years. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision* dated March 11, 2009.

On appeal, counsel contends that the field office director's decision was erroneous because it failed to consider the applicant's discretionary factors. Counsel contends that the applicant meets the requirements for the granting of a *nunc pro tunc* waiver.[3] Counsel contends that the applicant warrants a favorable exercise of discretion. *See Counsel's Brief,* received June 4, 2007. In support of his contentions, counsel submits only the referenced brief.

Section 212(a) of the Act, 8 U.S.C. § 1182(a), provides, in pertinent part:

> (a) Classes of Aliens Ineligible for Visas or Admission
> . . . .
> (6) Illegal Entrants and Immigration Violators
>
> (E) Smugglers.-
>
> (i) In general.-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.
> (ii) Special rule in the case of family reunification.-Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d) of the Act, 8 U.S.C. § 1182(d), provides in pertinent part:

> (11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the

[3] As discussed in the above footnote, the applicant is ineligible for permission to reapply for admission until he has remained outside the United States for a period of ten years and also applies from outside the United States after those ten years have passed. Furthermore, as discussed below, even if the applicant was eligible to apply for permission to reapply for admission, the applicant is otherwise inadmissible to the United States and is ineligible for a waiver of that ground of inadmissibility.

> case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

Accordingly, aliens who have, at any time, knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of the law are inadmissible. An exception to the section 212(a)(6)(E) ground of inadmissibility is available to eligible immigrants who only aided their spouse, parent, son, or daughter to enter the United States in violation of the law. A section 212(a)(6)(E) inadmissibility may also be waived under section 212(d) upon a showing that the alien (1) only aided an individual who, at the time of the offense, was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law; and (2) the alien either, had been admitted to the United States as a lawful permanent resident alien and did not depart the United States under an order of removal, or is seeking admission as an eligible immigrant.

While counsel states that the applicant was not convicted of alien smuggling, a finding of inadmissibility under section 212(a)(6)(E) of the Act does not require a conviction. The record reflects, and the applicant submits on appeal documentation establishing, that he had prearranged with a friend to have his vehicle at a drop zone when he brought his mother and sisters-in-law illegally into the United States. The record reflects that the applicant and the three women entered the United States illegally by waiting across the river and then walking to the drop-off point for the vehicle. The record clearly reflects that the applicant knowingly encouraged, aided, assisted and abetted his mother-in-law and sisters-in-law in entering the United States illegally. The AAO, therefore, finds that the applicant is inadmissible under section 212(a)(6)(E) of the Act and is statutorily ineligible for the exception set forth in section 212(a)(6)(E)(ii) of the Act or the waiver available in section 212(d)(11).

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(6)(E) of the Act, which are very specific and applicable and which mandatorily bar the applicant from the United States. Therefore, no purpose would be served in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.